

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

JACKIE W. McBEE,

Petitioner,

v.

3:95-cr-082
3:08-cv-444

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM AND ORDER

This motion to vacate, set aside or correct sentence was denied and the action dismissed on February 24, 2012. Petitioner has filed a motion for the court to vacate and re-enter the order of dismissal in order to reopen the time for filing a request for a certificate of appealability with the Sixth Circuit. Apparently, petitioner seeks additional time within which to file an appeal. Petitioner states that he did not receive a copy of the court's Memorandum and accompanying Judgment Order dismissing his § 2255 motion. According to petitioner, he only learned of the dismissal when he received his copy of the Sixth Circuit's order denying as moot his petition for writ of mandamus, which order referenced the dismissal of the § 2255 motion and was filed on April 2, 2012.

Rule 4(a)(6) of the Federal Rules of Appellate Procedure provides that, upon a finding that a party did not receive notice of a judgment within 21 days of its entry, the district court may reopen the time for appeal, for a period of 14 days, upon a motion filed within 180 days of entry of the judgment. Petitioner filed his motion to reopen less than 100 days of the entry of Memorandum and Judgment Order. The court finds that no party would be prejudiced by reopening the time to file an appeal. Petitioner thus having met the requirements of Rule 4(a)(6), his motion to reopen the appeal period [Court File No. 82] is **GRANTED**. Petitioner shall have fourteen (14) days from the entry of this Memorandum and Order within which to file his notice of appeal.

ENTER:

s/ Leon Jordan
United States District Judge